BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF THE CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

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SUMMARY

Section 332 of the Communications Act of 1934 creates a comprehensive regulatory scheme governing all commercial and private mobile services. This section defines the commercial mobile services category, preempts state rate and entry regulation of such services and permits the Commission to forbear from unnecessary Title II regulation. To properly implement Congressional intent in revising § 332, the Commission must:

- define the commercial mobile services category broadly so that all functionally similar services are subject to similar regulation; and
- forbear from unnecessary regulation of the commercial mobile services.

A broad definition of commercial mobile services, which includes services meeting the statutory definition and their functional equivalents, is necessary to prevent the threat of artificial disparities developing over time among similar services which are subject to differing regulatory regimes. Services falling within this broad classification include all current common carrier services (including cellular), all paging services, all specialized mobile radio ("SMR") services, and most PCS applications. Consistent regulatory treatment will foster the competitive process and, concomitantly, the consumer.

Extensive deregulation is also warranted in light of existing and anticipated market conditions. At a minimum, all tariffing requirements should be removed from cellular and other commercial mobile services. In addition, removal of other

unnecessary and burdensome regulatory requirements is necessary in light of the market in which the mobile services compete.

In establishing procedures for states to petition to regulate or to continue regulating a commercial mobile service provider's rates, the Commission should, consistent with Congressional intent, require the petitioner to bear the burden of proof that such regulation is necessary in light of local market conditions.

With regard to the commercial mobile services, the Commission should preempt state regulation of the right and the type of interconnection, and any rates charged for such interconnection. The Commission should also refrain at this time from imposing interconnection requirements upon commercial mobile services or equal access obligations on PCS providers.

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The Cellular Telecommunications Industry Association ("CTIA")[1], by its attorneys, hereby submits its comments in the above-captioned proceeding designed to establish consistent regulatory treatment for the commercial mobile services and to forbear from burdensome Title II obligations for such providers.[2] Given the importance of the pending rulemaking proceeding to the continued success of wireless communications, CTIA and its members are vitally interested parties to this proceeding.

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[1] CTIA is the trade association of the cellular industry. Its members include over 90% of the licensees providing cellular service to the United States and Canada. CTIA's membership also includes cellular equipment manufacturers, support service providers, and others with an interest in the cellular industry.

[2] Regulatory Treatment of Mobile Services, Notice of Proposed Rule Making in GN Docket 93-252, FCC 93-454 (rel. Oct. 8, 1993) ("Notice").

I. INTRODUCTION

In enacting Title VI, Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 ("the Budget Act")[3], Congress recognized the realities of the mobile services marketplace, i.e., that it is a competitive, dynamic and growing market. It also recognized that former § 332 of the Communications Act of 1934, as amended,[4] ("Act") although designed to avoid unnecessary, burdensome regulation, had not been fully successful. In fact, the former section fostered disparate regulatory treatment among the mobile services in that it created artificial distinctions among functionally similar mobile services.

To remedy this disparity, Congress amended § 332 to create a new, comprehensive regulatory scheme for the mobile services which:

- establishes "regulatory parity" among such services (i.e., no differing costs may be imposed on functionally similar services);
- permits the FCC discretion to remove unnecessary and burdensome regulatory constraints in light of a competitive marketplace; and
- subjects the commercial mobile services to minimum regulatory mechanisms to promote the public interest.

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[3] Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312, 392 (1993).

[4] See Communications Amendments Act of 1982, Pub. L. No. 97-259, 96 Stat. 1087, 1096 (1982). Section 120, dealing with private land mobile services, codified former § 332.

To properly implement Congressional intent, the FCC must prevent incidental distinctions among the mobile services from triggering significant differences in government requirements. Thus, the Commission is required to:

- define commercial mobile services broadly so that all functionally similar services are subject to similar regulation; and
- forbear from unnecessary regulation.

A broad definition will help to combat the genuine danger of artificial disparities which would otherwise develop over time if the commercial mobile services category were not encompassing. Moreover, extensive deregulation is warranted in light of existing and anticipated market conditions. The Commission should, at a minimum, act to remove tariff and other requirements from cellular, other commercial mobile services and their functional equivalents.

II. THE COMMERCIAL MOBILE SERVICES CATEGORY NECESSARILY INCLUDES SERVICES WITHIN THE STATUTORY DEFINITION AND THEIR FUNCTIONAL EQUIVALENTS

A. Congress Created The "Commercial Mobile Services" Category To Correct For Regulatory Disparities Created by Former Section 332

Revised § 332 is the product of a congressional determination to introduce "regulatory parity" among the mobile services. Former § 332 had set forth a specific regulatory and jurisdictional framework for land mobile services. It provided a test to distinguish between private and common carriage which hinged upon whether a land mobile licensee was reselling

interconnected telephone service for a profit. This test necessitated inquiries regarding whether the subject system was "multiple licensed or shared" and/or was "interconnected" with the public switched telephone network ("PSTN"). Because services classified as private were freed of federal Title II obligations and state rate and entry regulation, each component of the statutory definition was subjected to highly specialized, artificial interpretations in an effort to deregulate mobile service offerings.[5]

Congress recognized that the end result of former § 332 permitted private carriers:

> to offer what are essentially common carrier services, interconnected with the public switched telephone network, while retaining private carrier status. Functionally, these 'private' carriers have become indistinguishable from common carriers but private land mobile carriers and common carriers are subject to inconsistent regulatory schemes. The rates charged by common carrier licensees are subject to the requirements of title II of the Communications Act, which requires inter alia, that rates must be just and reasonable . . . Common carriers are also subject to state regulation of rates and services. Private carriers, by contrast, are statutorily exempt from title II of the

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[5] See, e.g., Telocator Network of America v. FCC, 761 F.2d 763, 766-767 (D.C. Cir. 1985) (FCC interpretation that private land stations will be considered multiple licensed or shared "'if more than one licensee or user has the capability of controlling the land station'" was "an allowable one" even though it is a "more restricted version of the language." Thus a store and forward paging system, because it was not "shared," was classified as private and exempted from interconnection restrictions); Data Com, 104 FCC 2d 1311, 1312-1315 (1986) (there is no "interconnection" to the PSTN where the paging service relays messages through the use of an answering service).

Communications Act and from rate and entry regulation by the States.[6]

As a result, Congress amended § 332(c) to ensure that "services that provide equivalent mobile services are regulated in the same manner."[7] Thus, it established "uniform rules" to govern all commercial mobile service offerings and directed "the Commission to review its rules and regulations to achieve regulatory parity among services that are substantially similar."[8] Congress explicitly adopted such a regulatory scheme to protect against the disparities created by former § 332 which it recognized as likely impeding "the continued growth and development of commercial mobile services and deny[ing] consumers the protections they need."[9]

The Commission, in implementing § 332 consistent with Congressional intent, must ensure that similar services are treated alike. Broadly defining "commercial mobile services" is a critical step in fulfilling this objective.

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[6] H.R. Rep. No. 103-111, 103rd Cong., 1st Sess. 259-260 (1993) (emphasis added) ("House Report"). The House Report specifically cited Amendment of Part 90, Subparts M and S, 3 FCC Rcd. 1838, 1840 (1988) (expanding the definition of an SMR "eligible user" to include individuals on an indiscriminate basis and the Federal government), and the Notice of Proposed Rule Making in Amendment of the Commission's Rules to Permit Private Carrier Paging Licensees to Provide Service to Individuals, P.R. Docket 93-38, 8 FCC Rcd. 1716 (1993) as evidence that private carriers were functionally indistinguishable from common carriers. (other citations omitted).

[7] House Report at 259.

[8] Id.

[9] Id. at 260.

B. Commercial Mobile Services Should Be Broadly Defined Consistent With Congressional Intent

The Budget Act defines commercial mobile services as "any mobile service (as defined in section 3(n)) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission."[10] Consistent with statutory directives, the Notice solicits comments on the various facets of this definition, including the meaning of "for profit," "interconnected service," and the distinction between service to the "public" and service "to such classes of eligible users as to be effectively available to a substantial portion of the public."[11] It is critical that the Commission address these issues with the overall statutory objectives in clear focus.

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[10] Section 6002(b)(2)(A), 47 U.S.C. § 332(d)(1). (Hereinafter, statutory references will be made solely to the U.S. Code.)

[11] See Notice at ¶ 10. The Notice tentatively concludes that the newly revised definition of "mobile service," see 47 U.S.C. § 153, "is intended to bring all existing mobile services within the ambit of Section 332," and thus would necessarily include all non-fixed services regulated under Parts 22 (public mobile services, including cellular), 25 (mobile satellite services), 80 (mobile marine), 87 (aviation), 90 (private land mobile), 95 (personal radio service) and 99 (personal communications services ("PCS")) of the Commission's rules. See Notice at ¶ 9. This proposed conclusion is consistent with Congressional intent to introduce consistent regulatory treatment among the mobile services. See H.R. Conf. Rep. No. 103-213, 103rd Cong., 1st Sess. 496-497 (1993) (amendment designed to include PCS and all services previously defined as private land mobile) ("Conference Report").

A broad definition of "commercial mobile services" will best fulfill the objectives of § 332. An encompassing classification, which includes services meeting the technical definition as well as their functional equivalents, will prevent artificial disparities from developing -- disparities which would threaten the dynamism and competitiveness of the mobile services marketplace. In interpreting the various facets of the commercial mobile services definition, then, the Commission should identify the incidental distinctions which once played a significant role in deregulating certain mobile services, and reject them now as superfluous in light of Congress' revised regulatory framework.

1. "For-profit" definition

The Notice requests comment on the proper interpretation of "for profit," and suggests that the term is designed to broadly distinguish between mobile radio licensees offering commercial "for profit" service to customers versus non-profit or internal uses. It questions whether the test for services for-profit should turn on "whether the service as a whole is offered on a commercial basis . . . even if . . . the 'interconnected' portion of its service was being offered on a non-profit basis."[12]

CTIA supports a broad interpretation of "for profit" that examines whether the service as a whole is offered commercially. Any concerns whether the "interconnected" portion of the service is being offered for resale should be viewed as mere remnants

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[12] Notice at ¶ 12.

left over from former § 332. In light of the new, comprehensive statutory scheme for mobile services, such distinctions are now made irrelevant. In addition, the licensee's status as non-profit would also be irrelevant in those situations where the licensee offers services which are functionally equivalent to commercial mobile services such as many private carrier paging licensees who offer services to "affinity" groups.

2. "Interconnected service" definition

The Budget Act defines "interconnected service" as "service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission)..."[13] Under the Senate amendment (which was ultimately adopted) the "interconnected service must be broadly available" to the public, while the House definition merely requires that "only one aspect of the service needs to be interconnected."[14] The Notice offers several alternatives for defining "interconnected" service and requests comment.[15]

"Interconnected" service should be defined broadly as a "service that allows a subscriber to send or receive messages

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[13] 47 U.S.C. § 332(d)(2).

[14] Conference Report at 496. The House Report specifically directed the Commission to consider how the term "interconnected" was used and qualified under former § 332, noting that the previous definition effectively maintained "a large number of SMRs which provide service to a narrow group of customers" as private land mobile services. House Report at 262.

[15] See Notice at ¶ ¶ 15-21.

over the public switched network."[16] Under this interpretation, interconnected service would qualify as being broadly available to the public, i.e., the public would be able to access the public switched network ("PSN") to send and receive messages, consistent with Congressional intent. To the extent that the Commission suggests that fine distinctions be made, such as whether the end-user is able to directly control or have real-time access to the PSN,[17] such contrivances would thwart Congressional intent. The various regulatory distinctions, such as those used for "store and forward" functions, impose unnecessary costs -- either direct administrative costs or actual output restrictions -- which disserve not only regulated firms but more critically, their customers. To carry forward these artifices of the past would reintroduce these costs not only for existing services but also for future technological possibilities.

3. "Classes of eligible users" and "effectively available" definition

The Budget Act requires that commercial mobile services be available to the "public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public."[18] The Conference Report finds that the commercial mobile services should encompass within its definition "all

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[16] Id. at ¶ 16 (emphasis added).

[17] Id.

[18] 47 U.S.C. § 332(d)(1).

providers who offer their services to broad or narrow classes of users so as to be effectively available to a substantial portion of the public."[19] The Notice seeks comment on the proper construction of this term while noting that clearly Congress intended to subject "some existing private services within the scope of its definition even if they are not offered to the general public without restriction."[20]

The fact that an individual licensee chooses to offer its services to a narrow class of users does not serve to make such services effectively unavailable, nor, as described below, does it make such services any less of a "functional equivalent" to the class of users. The licensee's intent must not be controlling; otherwise, it would be simple to frustrate Congressional intent merely by offering "customized" services.[21]

Likewise, the Commission should not consider system capacity, service area size or location as factors in determining effective availability.[22] System capacity serves merely as a technical limit on a provider's ability to offer service. The provider can still offer service to anyone, albeit to more limited numbers of the public. Similarly, the fact that a

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[19] Conference Report at 496 (emphasis added). The Conference Report adopted the Senate amendment with minor changes. It deleted the reference to "broad" directly before "classes of users." Id.

[20] Notice at ¶ ¶ 23-27.

[21] Id. ¶ 25 and note 31.

[22] Id. ¶ ¶ 26-27.

licensee chooses to serve a smaller area, for example, an individual office building or shopping mall, does not mean that such service is unavailable to the public. Once again, licensee intent should not be controlling.[23] The relevant viewpoint in the test for classifying commercial mobile services is that of the consumer, i.e., whether the customer views the service as a functional equivalent to a commercial mobile service.

4. Functional equivalence

As explained further below, the private mobile services category is exclusionary, i.e., it is neither a commercial mobile service nor its functional equivalent. Because Congress contemplated two regulatory classifications under § 332[24] -- commercial and private mobile services -- functionally equivalent services must by necessity be classified as commercial mobile services. Moreover, in light of Congress' purpose to subject all functionally similar services to similar regulatory treatment, such services necessarily fit within the commercial mobile services classification.

The term "functional equivalent" has highly allusive qualities, but analogies are available under both Commission

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[23] The services offered by many private carrier licensees, such as hospitals offering paging services to their medical staff, are indistinguishable from the common carrier services available to the same class of users. See supra, note 6.

[24] See infra, note 29.

precedent[25] and antitrust analysis.[26] Functional equivalence analysis focuses on whether services have material functional differences. Both the nature of the services and the customer's perception of the functional equivalency of these services are examined. Thus, like the FCC's "like" services analysis or antitrust's "relevant market" analysis, equivalence can be measured from the producer's perception (i.e., supply side)[27] and the consumer's perception (i.e., demand side).

Customer perception may be gauged formally by demand cross-elasticity analysis (i.e., how responsive is demand for one service to a price change in another service), or informally,

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[25] See AT&T Communications Revisions to Tariff 12, Memorandum Opinion and Order on Remand in CC Docket 87-568, 6 FCC Rcd. 7039, 7041 (1991); aff'd, Competitive Telecommunications Ass'n v. FCC, 998 F.2d 1058 (D.C. Cir. 1993) (citations omitted). This precedent was established in light of § 202(a), 47 U.S.C. § 202(a), which requires the FCC to determine whether common carriers are unreasonably discriminating in their charges for "like" communications services. Thus, the § 202(a) test provides some, albeit limited, guidance for the service classification necessary under § 332, considering the divergent statutory purposes behind § 202 and § 332.

[26] Antitrust analysis focuses on the relevant market, i.e., the area of "effective competition" within which the party operates. The relevant market is usually measured both in terms of the products affected and the geographic area where trade is confined. See United States v. E.I. du Pont de Nemours & Co., 351 U.S. 377, 404 (1956)(the relevant product market "is composed of products that have reasonable interchangeability for the purposes for which they are produced -- price, use and qualities considered") (emphasis added); Brown Shoe Co. v. United States, 370 U.S. 294, 336-337 (1962) (sets forth the criteria (similar to those used to assess the relevant product market) used to assess the relevant geographic market).

[27] See Twin City Sportservice, Inc. v. Charles O. Finley & Co., 512 F.2d 1264, 1271 (9th Cir. 1975) ("the degree of substitutability in production is measured by cross-elasticity of supply").

through statements made by the service's customers.[28] For § 332, plainly, if the services can serve as substitutes for each other, or may be supplied by the same set of suppliers, then they are functionally equivalent.

C. To Implement Congressional Intent, Private Mobile Services Should Be Defined To Exclude Commercial Mobile Services And Any Functional Equivalents

The Budget Act provides "private mobile service" with essentially a negative definition, i.e., it is "not a commercial mobile service or the functional equivalent of a commercial mobile service."[29] The Notice requests comment on the proper construction of this term.[30]

The definition of "private mobile services" should explicitly exclude commercial mobile services and their functional equivalents. Under this definition, as required by the statute, all functionally similar services would be subject to the same regulatory requirements whether or not they technically meet the definition of a commercial mobile service. Any other approach would merely repeat the unhappy history of the

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[28] See Competitive Telecommunications Ass'n, supra, 998 F.2d at 1063; du Pont, supra 351 U.S. at 400.

[29] 47 U.S.C. § 332(d)(3). The Conference Report stated that the addition of the "functional equivalent" language was intended to "make clear that the term includes neither a commercial mobile service nor the functional equivalent of a commercial mobile service." Conference Report at 496. It also noted that the House defined private mobile service "as anything that does not fall under commercial mobile service, and that the Senate amendment contained a "virtually identical" definition

former § 332, i.e., exotic construction of statutory definitions in an otherwise praiseworthy effort to avoid regulation.[31]

By revising § 332, Congress sought to firmly establish parity among the mobile services. Any service that may technically be classified as "non-profit" or as offering "non-interconnected" service should still be subject to the minimal strictures imposed upon the commercial mobile services when it is its functional equivalent.

The alternative construction of "private mobile services" reflected in the Notice, i.e., that a mobile service would be "private" if it fails to meet the statutory definition or is not the functional equivalent of a commercial mobile service,[32] is contrary to Congressional directives. Under this scenario, a service meeting Congress' statutory definition could nonetheless be classified as private. It does not make sense to refuse to label a service as commercial mobile service when it satisfies the technical definition. The addition of the "functional equivalent" language does not somehow create an exception to the definition of commercial mobile services; rather, it expands its reach to include similar services which technically evade the statutory definition.

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[31] See supra, section II.A.

[32] See Notice at ¶ 29-30.

D. Commercial Mobile Services Should Include All Services Satisfying The Statutory Definition And Their Functional Equivalents

Based upon the definitions outlined above, the commercial mobile services category necessarily includes (but is not limited to) the following:

- all common carrier mobile services, including cellular services;
- all paging services (including store and forward paging, whether formerly offered as private or common carriage);
- specialized mobile radio ("SMR"), including enhanced SMR ("ESMR").

Including such services within the commercial mobile services classification makes sense in light of Congress' directives and economic analyses concerning their substitutability. Additionally, looking forward, it can be expected that many PCS services fall into this category as well.

There are numerous competitive benefits to be gained by subjecting service substitutes to the same rules. Similar regulatory treatment will ensure that marketplace efficiencies are not placed at unnecessary risk because investment decisions and technology choices will be based on market demand versus a governmentally imposed unequal distribution of benefits and obligations. It ensures that competitors are not disadvantaged vis-a-vis each other through misuse of the regulatory process.[33]

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[33] See Robert H. Bork, The Antitrust Paradox 347 (1978). ("Predation by abuse of governmental procedures, including administrative and judicial processes, presents an increasingly dangerous threat to competition.")

And it also preserves the dynamism and continued growth of the market by preventing artificial disparities from developing over time because of divergent regulatory regimes.

1. Classifying such offerings as commercial mobile services is consistent with Congressional intent

Congress contemplated that all mobile services currently classified as common carriage should remain so.[34] Thus, as proposed by the Notice, cellular services should be classified as commercial mobile services.[35] CTIA submits that any attempts to reclassify common carrier services with limited capacity as private, based upon the notion that such services are not effectively available to a substantial portion of the public, should be summarily rejected for the reasons submitted above.[36]

Similarly, all paging services should be classified as commercial mobile services consistent with Congressional intent. Clearly, these services fall within the statutory definition of commercial mobile services. As demonstrated above, specialized interpretations of "interconnection" or of "sharing"[37] are now made irrelevant in light of Congress' newly enacted regulatory scheme.

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[34] The Notice acknowledges this by noting "that Congress did not enact any statutory provisions specifically addressing the reclassification of existing common carriers as private mobile services, in contrast to its detailed attention to the issue of private services being reclassified as commercial mobile services." Notice at ¶ 41.

[35] Id.

[36] See supra, section II.B.3.

[37] Notice at ¶ ¶ 39, 41.

Regarding PCS, Congress contemplated that it should it be regulated as a commercial mobile service.[38] The Notice, while anticipating that most PCS services will fit within the commercial mobile services category, nonetheless proposes that not all PCS should be classified as commercial mobile service because there may be some private PCS applications.[39] It also proposes to permit PCS licensees to choose whether to provide commercial or private mobile service.[40]

Assuming the narrow definition of "private mobile services" described above, CTIA supports the Notice's proposals. Presumably, most PCS applications will fit within the broad commercial mobile services classification. But the Budget Act certainly does not foreclose permitting licensee choice of regulatory classification in those situations where the service offered, for example, will be neither non-interconnected nor functionally equivalent to other commercial mobile services.[41]

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[38] See House Report at 260. ("disparities in the current regulatory scheme [former § 332] could impede the continued growth and development of commercial mobile services and deny consumers the protections they need if new services such as PCS were classified as private"); see also Representative Edward J. Markey, Statement at the Mark-up of Budget Reconciliation, Subtitle C Licensing Improvement Act of 1993, H.R. 2264 (May 11, 1993) ("Markey Statement").

[39] Notice at ¶ 45.

[40] Id. at ¶ 46.

[41] See 47 U.C.S. § 332(c)(1). This section specifically contemplates a dual-classification for certain services when it states that "A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this

(continued...)

The Commission has wisely declined in its PCS licensing policies to compartmentalize and thereby restrict the development of PCS.[42] Here too, permitting licensee choice will allow decisions based on market demand versus regulatory fiat.[43] To the extent, though, that "private" PCS services act as functional equivalents to commercial mobile services, they would be considered commercial mobile services.

Regarding SMR, the Notice concludes that wide-area SMR should be classified as a commercial mobile service, but requests

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[41](...continued)
Act." Id. (emphasis added). Of course, if a PCS provider wishes to provide both commercial mobile and private mobile PCS, it must meet alien ownership restrictions imposed upon common carriers.

[42] The Commission has provided cellular services with similar flexibility. See Liberalization of Technology and Auxiliary Service Offerings in the Domestic Public Cellular Radio Telecommunications Service, Report and Order in GEN Docket 87-390, 3 FCC Rcd. 7033 (1988); recon., Memorandum Opinion and Order, 5 FCC Rcd. 1138 (1990). As noted throughout these comments, as a matter of legislative intent and good policy, the commercial mobile services category should be inclusive. However, to the extent that a commercial mobile service provider will offer purely "private" mobile services, regulatory self-designation is appropriate and contemplated by the statute. Cellular licensees, as commercial mobile service providers, should have this opportunity to choose the regulatory classifications that best suit their particular service offerings.

[43] Permitting licensee choice to define the scope of the services it offers (and thereby effect its regulatory status) is inherently different from relying upon licensee intent to determine whether it is providing service to the public or a substantial portion of the public. In the former, once the licensee "chooses" its status it must continue to meet the requirements for that service or risk losing that status. In the latter, a rule dependent upon an inquiry into licensee intent would not only be manipulable and costly to administrate, but could allow competing services to gain market advantage based purely on regulatory gamesmanship.

comment on other SMRs (e.g., those not offering wide-area service or not employing frequency re-use).[44] As demonstrated above, distinctions concerning the size of the system or the licensee's intent to serve narrow categories of users are now made irrelevant.[45] In addition, technologies currently exist which can offer functionally equivalent services without frequency re-use.[46] Thus all SMR services should be considered commercial mobile services.[47]

2. Classifying such services as commercial mobile services is also proper under a functional equivalency analysis

Wireless services are increasingly becoming a critical part of the communications infrastructure in the United States. Currently, mobile communications are the fastest growing segment within the telecommunications industry. And factors such as digital technology, scale economies and an ever-increasing demand

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[44] Notice at ¶ ¶ 36-38.

[45] With "seamless roaming" and call hand-off and delivery technology, users are often unaware of the geographic boundaries of a cellular or ESMR system.

[46] See Gautam Naik, Geotek Will Get Infusion of Cash from Soros, Others, Wall St. J., November 3, 1993, at B6; Edmund L. Andrews, Radio Dispatchers Set to Rival Cellular Phones, N.Y. Times, November 5, 1993, at D4 (Geotek plans to offer mobile services in the northeastern U.S. by the end of 1995 using a frequency-hopping radio technology (which will provide it 25-30 times more capacity on a given frequency than cellular services) developed by the Israeli Defense Department.)

[47] Congress contemplated SMR service within the category of commercial mobile services. See Markey Statement, supra. (commercial mobile service is "broadly defined to include PCS, and enhanced special mobile radio services (ESMRs), and cellular-like services").

will shape its future growth.[48] Because the wireless service marketplace is dynamic and evolving, it is necessary to regulate all such services under one broad category to prevent against any regulatory handicapping resulting from subjecting functionally similar services to differing regulatory regimes.

The wireless services market contains many providers all of whom compete to provide customers a broad array of wireless services including: cellular, advanced and wide area paging, SMR, PCS, wireless cable, traditional radio services, mobile satellite, basic exchange telecommunications radio service ("BETRS") wireless facsimile, and broadband video (28 GHz LMDS), etc.[49] Existing wireless services such as cellular, paging and SMR are evolving to offer increased service capabilities in light of technological advances, and newer services such as mobile satellite and PCS are being introduced into the marketplace. In addition, scale economies have reduced the costs to manufacture mobile communications products and mobile infrastructure equipment; thus resulting in lower consumer prices, increased innovation (e.g., pagers with message storing capability) and decreased barriers to entry to establish mobile networks.[50]

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[48] See EMCI, Inc., The Changing Wireless Marketplace, A study presented to CTIA by EMCI, Inc. (December 1992), printed in, Cellular Brief: CTIA's Update on Key Wireless Policy Issues, at 1 (December 17, 1992). ("EMCI Study").

[49] See CTIA, Cellular: Building for the Wireless Future, Cellular Brief: CTIA's Update on Key Wireless Policy Issues (March 26, 1993) ("CTIA Cellular Paper").

[50] See EMCI Study, supra, at 2-5.